Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

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No. [redacted]-1599

HELEN A. PRYOR,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF CLAIMS

PETITIONER'S REPLY MEMORANDUM

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The United States in its memorandum in opposition, p. 1, states that petitioner reported for the physical examination on March 16, 1972 but she did not submit to psychiatric evaluation and, on p. 4, that at the time of her physical examination in March, 1972 she refused a psychiatric examination. This falsely and erroneously implies that petitioner was asked to submit to a psychiatric evaluation or was supposed to do so on that date, or as a result of the physical examination on that date. *See* Petitioner's Affidavit Concerning Documents and Events Leading Up to Removal and in Support of Petition of Payment of

Wages, p. 14, as well as Affidavit (of petitioner) in Support of Opposition to U. S.'s Motion for Summary Judgment and in Support of Petitioner's Motion for Summary Judgment, p. 15, which are part of record below, and which have never been controverted herein. The United States also states, pp. 1-2, that on a return visit the examining physician, Dr. Mayer, suggested to petitioner that she see the staff psychiatrist, but she failed to do so. Petitioner's Affidavit Concerning Documents, etc., p. 14, denies that on a return visit of March 25, 1972, bringing a specimen to a nurse, that she saw or talked to Dr. Mayer, or that on another return visit of April 3, 1972, to report to the nurse for a recheck of vision, pp. 17-18, that any conversation giving rise to Dr. Mayer's observations or impressions noted by the United States on p. 2 of its memorandum in opposition ever took place. Also, *see* Affidavit (of petitioner) in Support of Petitioner's Opposition, etc., p. 15.

Dr. Mayer, the *examining* physician, never specifically "recommended" that petitioner be evaluated by a psychiatrist, and in fact had told petitioner that she did not need to be so evaluated on the date of the physical examination of March 16, 1972, and Dr. Pease, who did recommend that petitioner be given a psychiatric evaluation was *not* the *examining physician, as was "required" by CSC and agency regulations — and he never saw nor observed petitioner* (*see* Pet. App. P., p. 107a; Pet. App. O, pp. 94a-95a).

The U.S. on p. 2 of its memorandum in opposition states petitioner was asked to report for a psychiatric evaluation on April 25, 1972 and named a representative but failed to report. These allegations are completely in error with the record and petitioner's said Affidavit in Support of Opposition, etc., p. 19, in that petitioner never received the notice until late April 24, 1972, and did not then or on the date of the proposed examination have a personal representative as required by CSC and agency regulations (Pet. App. O, p. 95a; Pet. App. P, p. 102a); nor was there a letter of record at that time from anyone designated as the personal representative of petitioner.

The U. S. in its memorandum in opposition then states on p. 2, that a final attempt in June, 1972 to have petitioner undergo psychiatric evaluation also was unsuccessful, is contradicted by the Affidavit (of petitioner) in Support of Opposition etc., pp. 15-16, stating she was on sick leave without pay approved by her supervisor from June to September 18, 1972 and under a doctor's care, as a result of the duress and harassment thrust upon her by the agency.

The submission to CSC for petitioner's disability retirement, which was dismissed because of petitioner's alleged failure to cooperate with the medical officer, was dismissed in error. (*See Pet. App. O*, p. 70a, to the effect that the agency should continue to process the application on the basis of other available evidence, and Digest of Significant Decisions, U.S. CSC Vol. II, No. 12, 8/76, PH 752B60254; *see also In the Matter of John W. King, Administrative Law Judge, Social Security Administration, Dept. of HEW, before the USCSC*, Docket No. 5, July 21, 1977.)

Yates v. Manale, 377 F.2d 888 (C.A. 5), cited by the U. S. as prime authority for removal based on insubordination for refusal to submit to a fitness-for-duty examination, is easily distinguishable by its facts from the instant case. *Yates* involved a request to take a medical examination, presumably only a physical examination, not a psychiatric evaluation; Yates refused in writing to do so; the procedures and agency and CSC and regulations are vastly different where a mental condition is suspected in a federal non-probational employee, as petitioner, as has been shown through the content of the Petition for Writ of Certiorari. Indeed, in a concurring opinion in *Yates*, Judge Young thought justice would not result unless the case was returned to the agency to determine if the federal employee was responsible for her action in refusing to submit to the examination.

The U. S. cites *Arnett v. Kennedy*, 416 U.S. 134, involving a federal employee, and other cases which have absolutely nothing to do with federal employees nor fitness-for-duty examinations,

as if the federal government as an employer has unlimited authority to request and/or order a non-probationary federal employee to undergo a psychiatric evaluation.

It is the contention and thrust of petitioner's argument that such authority of the federal government is not unlimited or absolute, as in a totalitarian state, or the exercise thereof becomes violative of the Constitutional rights of federal employees, and especially where the federal government violates and disregards its own rules and regulations as it has repeatedly been demonstrated herein by petitioner.

The issues of the failure of the federal government to comply with applicable agency and CSC regulations are properly before this Court under Rule 23 1(c), since they are fairly comprised within the statements of the questions presented. Indeed, these issues merit review by this Court, affecting the nearly three million civilian employees of the federal government, and in response to the large number of complaints received from them concerning the abuse and misuse of the fitness-for-duty process. *See* Report Ad Hoc Hearings on Fitness for Duty Examinations, chaired by Congressman Walter E. Fauntroy, June 29 and July 1, 1976.

It is, therefore, respectfully submitted that the Petition for a Writ of Certiorari be granted.

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September, 1977